

OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments.

FACTUAL HISTORY

On February 11, 2008 appellant, then a 51-year-old administrative assistant, filed an occupational disease claim (Form CA-2) alleging that she had constant pain in both elbows, both hands, both arms, neck, and back as a result of repetitive computer use, filing, and holding the telephone in the performance of duty. The claim form did not indicate whether appellant stopped work.

OWCP accepted appellant's claim for neck sprain, sciatica, bilateral medial epicondylitis, bilateral lateral epicondylitis, and bilateral carpal tunnel syndrome. It paid wage-loss compensation from February 11 to June 6, 2009 and placed appellant on the periodic rolls, effective June 7, 2009.

Appellant underwent left carpal tunnel release surgery on April 6, 2009 and right carpal tunnel release surgery on June 8, 2009. Both surgeries were authorized by OWCP.

Beginning December 1, 2009, OWCP mailed appellant EN1032 forms for her completion. The forms instructed her to report all employment for which she received a salary, wages, income, sales commissions, piecework, or payment of any kind. Appellant was also directed to report all self-employment or involvement in business enterprises, including (but not limited to) farming, sales work, operating a business, and providing services in exchange for money, goods, or other services. The kinds of services that she was required to report included such activities as carpentry, mechanical work, painting, contracting, child care, keeping books and records, odd jobs, and managing and overseeing a business of any kind, including a family business. Appellant was also instructed to report any work or ownership interest in any business enterprise, even if the business lost money or if profits or income were reinvested or paid to another. If she performed any duties in a business enterprise for which she was not paid, she had to show as the rate of pay what it would have cost the employing establishment or organization to hire someone to perform the work or duties she did, even if the work was for herself or a family member.

The EN1032 forms included the following warning: "A false or evasive answer to any question, or the omission of an answer, may be grounds for forfeiting your compensation benefits and subject you to civil liability." The forms contained certification clauses which informed appellant of the consequences of not accurately reporting her employment activities, such as being subjected to criminal penalties and losing the right to receive workers' compensation benefits.

Appellant completed EN1032 forms on December 16, 2009, December 13, 2010, January 1 and December 12, 2012, and December 16, 2013. She reported "No" on each form indicating that she had not worked for an employer, was not self-employed, and was not involved in any business for the previous 15 months.

On December 27, 2014 appellant completed and signed an EN1032 form. In response to the question of whether she worked for an employer for the past 15 months, she reported "No."

Appellant also responded “No” when asked if she was self-employed or involved in any business enterprise in the past 15 months.

OWCP received a narrative statement from appellant on June 12, 2015. Appellant indicated that when she was filling out her annual paperwork regarding work activities, she filled in all the answers, but she still had a question about a Limited Liability Company (LLC). She related that her husband purchased a snow cone trailer and added her to the LLC. Appellant explained that her husband put her name on all the permits, trailer, and the LLC just in case anything happened to him. She noted that her husband had not made any profit from the business so far. Appellant reported that when filling out the form, she answered “No” to everything like she always did and did not think about the snow cone trailer until her husband opened it for business this summer. She indicated that she had made a mistake on the form and needed to correct an answer. Appellant submitted documents, which demonstrated that she was a registered agent for a domestic limited-liability company called Harco Productions, LLC, effective May 28, 2014. The LLC ran a business called “T.T.’s Hawaiian Snow.”

In a July 23, 2015 letter, the employing establishment’s Office of Inspector General (OIG) informed OWCP that it had conducted an investigation into appellant pertaining to her workers’ compensation claim. The investigation revealed that appellant had been operating her own business and failed to report the activities to OWCP. The OIG requested that OWCP issue a forfeiture determination based on appellant’s nondisclosure of her employment activity and that a second opinion examination be conducted.

OWCP received an OIG summary report of investigation, which noted that appellant had been off work and receiving workers’ compensation on the periodic rolls since 2008. During their investigation, OIG agents periodically conducted surveillance of appellant and observed her working at a snow cone business on a daily basis. The report indicated that appellant was observed shopping at numerous stores, frequently running errands, and operating a snow cone business daily. At the snow cone business, she was observed carrying merchandise and buckets, unloading supplies from a trailer, writing on the outside menu of the business, setting up tables and umbrellas, and staking signs in the ground. Appellant was observed performing these activities on April 14, 21, 23, 28, 29, 30, and May 1, 5, 7, 13, and 15, 2015. The report included photographs and video surveillance of appellant running errands and working at the snow cone business.

The OIG report also contained a summary of an interview that OIG agents conducted with appellant on May 21, 2015 regarding her workers’ compensation claim and injury. Appellant acknowledged performing the above-noted activities and that she was currently operating a snow cone business with her husband. She admitted to filing for an LLC for the business the prior year. Appellant also informed the OIG agents that she was able to drive her vehicle, go shopping, carry supplies for the business, serve customers, and work the snow cone window. She indicated that she did not report the business to OWCP and claimed that she knew that opening the snow cone business could cause a problem regarding her workers’ compensation. Appellant related that she wanted to continue to operate the snow cone business and that she would contact OWCP about electing disability retirement benefits, instead of workers’ compensation benefits.

Attached to the OIG report of investigation were documents from the state of Oklahoma establishing HARCO Production and T.T.'s Hawaiian Snow as LLCs. Appellant is listed as the registered agent for both companies. Also attached to the report of investigation was the completed EN1032 form, signed on December 27, 2014, on which appellant responded "no" when asked "Did you work for any employer during the last 15 months" and "Were you self-employed or involved in any business enterprise in the past 15 months. She answered "yes" when asked "whether you were unemployed for all periods during the past 15 months" and "no" when asked "During the past 15 months, did you perform any volunteer work including volunteer work for which ANY FORM of monetary or in-kind compensation was received?"

In a completed Form EN1032 dated February 7, 2016, appellant answered "yes" that she was self-employed or involved in a business enterprise from the period April 1 to September 1, 2015. She explained that she and her husband bought a snow cone stand and that she bought and delivered cups, checked on the employees running the stand, and visited with customers a couple of times. Appellant noted a rate of pay of \$8.00/hour.

OWCP received a narrative statement dated February 7, 2016, in which appellant explained that because her husband had lung cancer, he added her name to the title of a snow cone stand that he had bought. Appellant related that the snow cone stand was in a permanent spot from April 1 to September 1, 2015. She indicated that, while grocery shopping with her husband, they occasionally bought cups, straws, or napkins and dropped them off at the snow cone stand. Appellant also noted that she occasionally stopped by the snow cone stand, which was two blocks from her house, to see how the business was operating and to visit with customers. She admitted that she handed snow cones to a couple of customers while visiting. Appellant asserted that she was never paid or received any money from her husband's snow cone stand for checking on the employees, delivering any supplies, or visiting with the customers. She also indicated that her husband had not made any money for himself while operating the snow cone stand.

By decision dated August 18, 2016, OWCP found that appellant had forfeited her wage-loss compensation for the period September 27, 2013 through December 27, 2014 for failure to report her business and employment activities or earnings on a Form EN1032. The forfeiture period covered the 15 months preceding the December 27, 2014 EN1032 form. OWCP found that appellant had knowingly provided false information about earnings and self-employment on that EN1032 form. It also found that all compensation paid during the period would be considered an overpayment subject to recovery in accordance with 5 U.S.C. § 8129.

By separate decision dated August 18, 2016, OWCP issued a preliminary determination that appellant received an overpayment of compensation in the amount of \$43,832.60 for the period September 27, 2013 through December 27, 2014 as a result of the forfeiture. It found that she was at fault in the creation of the overpayment because she failed to report her business and employment activities or earnings from the snow cone business that she owned with her husband. The preliminary determination provided an explanation of the calculation of the overpayment. OWCP requested that appellant complete an attached overpayment action request and an overpayment recovery questionnaire (Form OWCP- 20) within 30 days.

In an overpayment calculation worksheet, OWCP indicated that for the period September 22 through October 19, 2013 appellant received a net compensation payment of

\$2,661.28 every 28 days, which equaled a daily rate of \$95.05. It multiplied this daily rate by 107, the number of calendar days that appellant was overpaid, for a total overpayment amount of \$10,169.89. OWCP related that for the period January 12 through February 8, 2014, appellant received a net compensation of \$2,651.60 every 28 days, which equaled a daily rate of \$94.70. It multiplied this daily rate by 28 days, the number of calendar days that appellant was overpaid for a total of \$2,651.60. OWCP reported that for the period February 9 through March 8, 2014, appellant received a net compensation payment of \$2,665.31, which equaled a daily rate of \$95.1896. It multiplied this daily rate by 28 days, the number of calendar days that appellant was overpaid for a total of \$2,665.31. Beginning March 9, 2014, appellant received a net compensation of \$2,699.60 every 28 days, which equaled a daily rate of \$96.41. It multiplied this daily rate by 294, the number of calendar days that appellant was overpaid for a total of \$28,345.80. OWCP totaled the overpayment amounts for the period September 27, 2013 to December 27, 2014 for a total overpayment of \$43,832.60.

On September 18, 2016 appellant requested a telephone conference on the issues of fault and possible waiver. She related that she disagreed with the findings that the overpayment occurred, the amount of the overpayment, and the issue of fault. Appellant completed the overpayment recovery questionnaire (OWCP-20). She reported a total monthly income of \$5,269.42, total monthly expenses of \$5,463.93, and assets of \$10,500.00. Appellant listed three dependents. She asserted that she was not at fault in the creation of the overpayment because she was added to the LLC due to her husband's health issues. Appellant reported that she signed papers, but received no pay. She noted that her husband ran the stand for three football games in September 2014 and put the stand in storage in October. Appellant related that when she completed the Form EN1032 in December 2014, she did not think about the snow cone stand. She noted that when the error was brought to her attention in May, she immediately tried to correct it by submitting a letter to OWCP. Appellant checked a box marked "yes" indicating that she now fully understood her reporting responsibilities.

Appellant also provided a detailed, itemized list of her household expenses, credit card debt and loans, and snow cone trailer expenses. She included financial documents regarding her home, including property value assessments and a mortgage statement. Appellant also submitted various bank statements from two checking accounts³ and a statement of health insurance out-of-pocket expenses for 2016.⁴

In a September 17, 2016 narrative statement, R.H., appellant's husband, described the work that he did to open up the Hawaiian Snow stand and asserted that appellant did none of these jobs. He related that when appellant rode along with him to do things for the business she

³ Appellant provided statements from Midfirst Bank, which covered the following periods and showed the corresponding balances: from January 22 to February 21, 2016, a balance of \$640.17; from February 21 to March 21, 2016, a balance of \$270.77; from March 21 to April 21, 2016, a balance of \$14.06; from April 21 to May 21, 2016, a balance of \$285.72; from May 21 to June 21, 2016, a balance of \$353.41; from June 21 to July 21, 2016, a balance of \$124.24; from July 21 to August 21, 2016, a balance of \$92.74. She also submitted statements from Bank of America, which covered the following periods and showed the corresponding balances: from February 10 to March 14, 2016, a balance of \$1,234.91; from March 15 to April 12, 2016, a balance of \$283.69; from April 13 to May 11, 2016, a balance of \$15,979.42; from May 12 to June 13, 2016, a balance of \$884.91; from June 14 to July 12, 2016, a balance of \$273.75; and from July 13 to August 12, 2016, a balance of \$1,136.19.

⁴ Health insurance out of pocket expenses for the year 2016 totaled \$3,463.40.

did not carry items bought for the business and would sit in the truck or stand while he worked. R.H. noted that appellant did not operate the ice shaver or the cash register and did not take any orders from customers. He indicated that, if appellant handed a snow cone to a customer, it was part of her “chit-chat” with a customer and did not actually benefit the business. R.H. alleged that the pictures in the OIG report which showed appellant with shopping bags in her car were of appellant shopping for personal items and/or groceries. He noted that if they shopped somewhere together appellant would gather the household items and he looked for things needed for the business. R.H. asserted that when the OIG agents came to their house they badgered appellant and tried to negotiate with her that they could make this all go away if she switched to retirement disability instead of OWCP benefits.

OWCP also received a September 20, 2016 statement by H.P., who related that he worked for appellant’s husband at Hawaiian Snow from April 1 to September 30, 2015. H.P. alleged that while he worked there he never saw appellant work at the snow cone stand. He noted that there were always two employees on a shift, so there was no need for appellant to help. H.P. related that appellant sometimes rode along with her husband, but she did not perform any work.

In a September 22, 2016 statement, D.B., related that he was an employee for Hawaiian Snow from April 1 to September 30, 2015. He noted that appellant sometimes brought the snow cone stand employees something to eat. D.B. explained that when appellant handed a snow cone to a customer, it was unnecessary for her to do so and was very unusual. He alleged that appellant was simply acting out of courtesy to hand the snow cone to a customer she was speaking with. D.B. indicated that appellant usually sat inside the business to take advantage of the air conditioning or sat in the shade of the umbrellas located over the picnic tables. He also related that when appellant and her husband came to the business they usually only stayed for 10 to 15 minutes on average.

On October 26, 2016 OWCP held a telephone conference with appellant and counsel. OWCP discussed recovery of the overpayment and advised appellant of her right to appeal the forfeiture decision if she disagreed with their finding of fact of overpayment.

Appellant submitted various receipts for personal expenses. She also provided statements and bills for a news subscription, monthly lawn care, business insurance, auto insurance, auto repair bill, auto loan, electricity bill, utilities bill, cell phone bill, monthly public storage, veterinarian bills, credit card bills, statement of patient costs, and tax accountant services. Appellant submitted a 2016 property tax assessment, home insurance policy, statement for a home loan, and statement for home equity line of credit. The financial information submitted noted available funds in the amount of \$10,500.00, as well as a \$79,000.00 ownership interest in a rental property. Appellant documented monthly income in the amount of \$5,269.42. She indicated that her monthly expenses totaled \$5,463.93.

By decision dated December 12, 2016, OWCP finalized the preliminary overpayment determination, finding an overpayment of compensation in the amount of \$43,832.60 for the period September 27, 2013 to December 27, 2014. It also found that appellant was at fault in the creation of the overpayment because she had not provided information that she should have

known to be material. OWCP advised that the overpayment would be recovered by deducting \$250.00 from appellant's continuing compensation every 28 days.⁵

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA provides in pertinent part:

“The Secretary of Labor may require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the time the Secretary specifies... An employee who ---

- (1) fails to make an affidavit or report when required; or
- (2) knowingly omits or understates any part of his or her earnings;

forfeits his or her right to compensation with respect to any period for which the affidavit or report was required.”⁶

An employee, however, can only be subjected to the forfeiture provision of 5 U.S.C. § 8106 if he or she “knowingly” failed to report employment or earnings. It is not enough to merely establish that there were unreported earnings. The Board has recognized that forfeiture is a penalty, and, as a penalty provision, it must be narrowly construed.⁷ The term “knowingly” is defined within OWCP's regulations as “with knowledge, consciously, willfully, or intentionally.”⁸

OWCP regulations define earnings from employment or self-employment as: (1) gross earnings or wages before any deductions and includes the value of subsistence, quarters, reimbursed expenses and any offer goods or services received in kind as remuneration; or (2) a reasonable estimate of the cost to have someone else perform the duties of an individual who accepts no remuneration.⁹ Neither lack of profits nor the characterization of the duties as a hobby removes an unremunerated individual's responsibility to report the estimated cost to have someone else perform his or her duties.¹⁰

ANALYSIS -- ISSUE 1

In an overpayment decision, the Board must first determine whether an overpayment occurred by examining the underlying decision of OWCP.¹¹ By decision dated August 18, 2016,

⁵ OWCP reissued the December 12, 2016 decision that same date, as modified to change referenced information from the Bureau of Labor Statistics (updated Debt Amortization Schedule).

⁶ 5 U.S.C. § 8106(b).

⁷ *Anthony A. Nobile*, 44 ECAB 268, 271-72 (1992).

⁸ 20 C.F.R. § 10.5(n); *Christine P. Burgess*, 43 ECAB 449, 458 (1992).

⁹ *Id.* at § 10.5(g).

¹⁰ *Id.*

¹¹ *Russell E. Wageneck*, 46 ECAB 653 (1995); *Samuel J. Russo*, 28 ECAB 43 (1976).

OWCP found that appellant forfeited her wage-loss compensation for the period September 27, 2013 through December 27, 2014 for failure to report her business and employment activities or earnings on a Form EN1032 dated December 27, 2014.

The Board finds that OWCP properly determined that appellant forfeited her compensation for the period September 27, 2013 to December 27, 2014.

In this case, OWCP based its finding of forfeiture for the period September 27, 2013 to December 27, 2014 on the fact that, on the Form EN1032 signed and dated December 27, 2014 appellant failed to report her employment activities in the preceding 15 months. She reported “No” in response to questions of whether she worked for an employer, was self-employed, or was involved in any business enterprise for the past 15 months. The evidence of record demonstrates, however, that appellant was involved in the business enterprise from May 28 to December 27, 2014 as she performed employment activities. The evidence of record demonstrates that appellant was a registered agent for a LLC company called Harco Productions, LLC, effective May 28, 2014. This LLC owned and operated a snow cone business called T.T.’s Hawaiian Snow. In a summary of her interview with an OIG agent on May 21, 2015, appellant admitted that she and her husband filed for an LLC, establishing the business in 2014.

The June 2015 OIG Summary Report of Investigation documented photographic and video surveillance of appellant working at the snow cone business daily. The report indicated that appellant was observed shopping at numerous stores, frequently running errands, and operating a snow cone business daily. At the snow cone business she was observed carrying merchandise and buckets, unloading supplies from a trailer, writing on the outside menu of the business, setting up tables and umbrellas, and staking signs in the ground. The report also included photographic and video surveillance of appellant running errands and running the business. During an interview conducted by OIG agents, appellant admitted performing the above-noted activities. She also informed the OIG agents that she was able to drive her vehicle, go shopping, carry supplies for the business, serve customers, and work the snow cone window. Appellant indicated that she did not report the business to OWCP because she knew that opening a snow cone business would cause a problem with OWCP.

Moreover, in a February 7, 2016 narrative statement, appellant admitted that she and her husband occasionally bought supplies for the snow cone stand and dropped them off. She also related that she occasionally stopped by the snow cone stand to see how it was going, visit with customers, and handed snow cones to a couple of customers while waiting. In the EN1032 forms appellant signed through the years, OWCP notified her of her responsibility to complete the forms and provide relevant information concerning her employment status and earnings during the periods covered by the forms. The EN1032 forms signed by appellant used such terms as business, enterprise, and service to explain the obligation for reporting all forms of employment, self-employment, and earnings. The explicit language of the EN1032 forms clearly advised appellant that the nature of her work in her family snow cone business would require her to report such employment activities on the forms. Appellant’s signing of strongly-worded certification clauses on the EN1032 forms further shows that she was aware of materiality of her failure to report her employment.¹²

¹² See *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

Accordingly, the Board concludes that appellant “knowingly” omitted her employment activities in her family business enterprise under section 8106(b)(2) of FECA by failing to report her ownership and employment activities associated with a snow cone stand business on a Form EN1032 dated December 27, 2014.¹³

On appeal appellant argues that she was not required to report activities related to the snow cone business she and her husband owned because she did not receive wages and her work was sporadic. However, EN1032 forms required reporting such employment activities even if no wages were earned, the activities were part time or sporadic, or they were performed for a family business.¹⁴ The applicable EN1032 form provided that, if appellant performed any duties in a business enterprise for which she was not paid, she had to show as the rate of pay what it would have cost the employing establishment or organization to hire someone to perform the work or duties he did, even if the work was for him, a family member or a relative. Appellant argued that the type of activities she performed would not require hiring another person, but the Board finds that this argument is not credible based upon her own admissions of employment activity. The Board notes that appellant’s activities, which included selecting and buying supplies, are the types of activities that would require hiring another person.¹⁵

LEGAL PRECEDENT -- ISSUE 2

Under 5 U.S.C. § 8106(b), compensation forfeited under this subsection, if already paid, shall be recovered under section 8129 of this title, unless recovery is waived under that section.¹⁶

Section 10.529 of OWCP’s implementing regulations provides as follows:

“(a) If an employee knowingly omits or understates any earnings or work activity in making a report, he or she shall forfeit the right to compensation with respect to any period for which the report was required. A false or evasive statement, omission, concealment or misrepresentation with respect to employment activity or earnings in a report may also subject an employee to criminal prosecution.

“(b) Where the right to compensation is forfeited, OWCP shall recover any compensation already paid for the forfeiture pursuant to 5 U.S.C. § 8129 [recovery of overpayments] and other relevant statutes.”¹⁷

¹³ See *J.W.*, Docket No. 15-0459 (issued June 23, 2016) (the Board found that the employee “knowingly” omitted her earnings and emphasized that the instructions on the Form EN1032 forms clearly indicated that all income and earnings must be reported and that appellant’s signing of the strongly-worded certification clause showed that she was “aware of materiality of her failure to report her employment.”)

¹⁴ See *C.F.*, Docket No. 16-0916 (issued June 28, 2017).

¹⁵ *J.A.*, Docket No. 14-1863 (issued July 7, 2015).

¹⁶ 5 U.S.C. § 8106(b).

¹⁷ 20 C.F.R. § 10.529; see also *Martin James Sullivan*, 50 ECAB 158 (1998) (where an EN1032 is improperly completed, resulting in a finding of forfeiture, the Board has found that the period of forfeiture is the entire 15-month period covered by the form in question).

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly determined that an overpayment of compensation in the amount of \$43,832.60 was created. As noted above, OWCP regulations provide that it must declare an overpayment of compensation for any compensation already paid for the period of a given forfeiture of compensation. If a claimant has any employment, including self-employment or involvement in a business enterprise, during a period covered by an EN1032 form which he or she fails to report, the claimant is not entitled to any compensation for any portion of the period covered by the report, even though he may not have had earnings during a portion of that period. The record of evidence contains payment records and worksheets from OWCP showing that appellant received an overpayment of compensation in the amount of \$43,832.60 for the period September 27, 2013 to December 27, 2014. The Board finds that the overpayment was properly calculated and appellant received an overpayment of compensation in the amount of \$43,832.60.

LEGAL PRECEDENT -- ISSUE 3

Section 8129 of FECA and its implementing regulations provide that an overpayment must be recovered unless incorrect payment has been made to an individual who is without fault, and when adjustment or recovery would defeat the purpose of FECA, or would be against equity and good conscience.¹⁸ No waiver of payment is possible if appellant is with fault in helping to create the overpayment.¹⁹

In determining whether an individual is not without fault or alternatively, with fault, section 10.433(a) of OWCP's regulations provide in relevant part:

“An individual is with fault in the creation of an overpayment who:

Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

Failed to provide information which he or she knew or should have known to be material; or

Accepted a payment which he or she knew or should have known to be incorrect.”²⁰

ANALYSIS -- ISSUE 3

The Board finds that appellant was at fault in the creation of the overpayment due to the forfeiture of her compensation for the period May 28 to December 27, 2014.

¹⁸ 5 U.S.C. § 8129; 20 C.F.R. §§ 10.433, 10.434, 10.436, 10.437.

¹⁹ *Robert W. O'Brien*, 36 ECAB 541, 547 (1985).

²⁰ 20 C.F.R. § 10.433(a).

As discussed above, appellant was engaged in a business enterprise during the period covered by the Form EN1032 dated December 27, 2014. The evidence of record establishes that she owned a snow cone stand business with her husband, beginning May 28, 2014, and that she was engaged in the operation of the snow cone business. Appellant did not, however, report such employment activity on the December 27, 2014 Form EN1032 which she submitted to OWCP even though the Form EN1032 clearly instructed her to report such employment activities. Because she was at fault in the creation of the overpayment, OWCP properly determined that she was not entitled to waiver of the recovery of the overpayment.²¹

LEGAL PRECEDENT -- ISSUE 4

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²² Section 10.441(a) of the regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to [OWCP] the amount of the overpayment as soon as the error is discovered or her attention is called to same. If no refund is made, [OWCP] shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”²³

ANALYSIS -- ISSUE 4

The Board finds that OWCP gave due regard to the financial information appellant submitted as well as the factors set forth in section 10.441. Given appellant's monthly income and assets, including the value of her rental property, OWCP did not abuse its discretion in setting the rate of recovery as \$250.00 from each of her continuing compensation payments. The Board finds that OWCP properly determined the recovery of the overpayment in this case.²⁴

CONCLUSION

The Board finds that OWCP properly determined that appellant forfeited her right to compensation for the period September 27 to December 27, 2014; that an overpayment of compensation in the amount of \$43,832.60 occurred as a result of the forfeiture; that appellant was at fault in the creation of the overpayment; and that OWCP properly required recovery of the overpayment by deducting \$250.00 from appellant's continuing compensation payments.

²¹ *Id.*

²² *Lorenzo Rodriguez*, 51 ECAB 295 (2000).

²³ 20 C.F.R. § 10.441(a).

²⁴ *See D.S.*, Docket No. 17-1224 (issued August 28, 2017).

ORDER

IT IS HEREBY ORDERED THAT the December 12, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 13, 2018
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board